

Agent Regulation in Virginia

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For VHRI's Consideration Today....

In connection with the VHRI Advisory Council's consideration of the role of the Navigator in the Virginia Health Benefits Exchange, it may be helpful to consider the current role of the insurance agent in Virginia, in particular:

- How are agents regulated in Virginia today and what initial and ongoing requirements must they meet in order to become licensed and maintain their licenses?
- What enforcement authority and regulatory tools exist in Virginia today to ensure that agents are compliant with applicable Virginia laws and regulations?

Virginia's Insurance Agents – their role today; license requirements; regulatory oversight

Currently there are approximately 105,000 active agents in Virginia holding the Health insurance qualification. This number can be broken down further by their resident status and/or whether the licenses apply to individuals or to agencies.

Virginia's insurance agents perform a number of critical services on behalf of their customers, but perhaps the key function from a regulatory standpoint is their role in **selling, soliciting and negotiating** contracts of insurance. In fact, no one other than a licensed insurance agent can perform that role...

Virginia's Insurance Agents – their role today; license requirements; regulatory oversight

Virginia Code § 38.2-1822 states, in part, that **no person may act as an agent in Virginia unless and until he has obtained a license.** The term *act as an agent* means:

“....selling, soliciting, or negotiating contracts of insurance or annuity on behalf of an insurer licensed in this Commonwealth or receiving or sharing, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation, or negotiation of any such contract, or both....”

Agent Licensing Requirements

The Code of Virginia, in Chapter 18 of Title 38.2, establishes numerous requirements for the qualification and examination of agents, appointments and associated fees, and continuing education requirements. These requirements include (but are not limited to) the following:

- **Licensing exam** - Resident health agents must pass an examination “in a form and manner prescribed by the Commission”
- **Application required** - Applicants for an insurance agent license must apply to the Commission and pay a nonrefundable application processing fee
- **Good character qualification** - The applicant must satisfy the Commission that he is “of good character, has a reputation for honesty”, and has complied with other requirements prescribed in the law
- **Appointment requirements** - The insurer(s) on whose behalf the agent will be selling insurance must file a notice of appointment with the Commission and pay a nonrefundable appointment fee (late payment penalties also apply)
- **Continuing Education** - A Health agent must furnish, on a biennial basis, evidence that he has satisfied continuing education requirements, (16 hours of relevant CE credits, 2 of which must be related to Virginia insurance laws and regulations)

Regulatory Oversight of Agents – Virginia Code §§ 38.2-1831 and 38.2-1832

§ 38.2-1831. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any person's license for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;
2. Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;
3. Obtaining or attempting to obtain a license through misrepresentation or fraud;
4. Engaging in the practice of rebating;
5. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate an existing policy and purchase a new policy through misrepresentation;
6. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
7. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
8. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

§ 38.2-1831 (continued)

9. Having been convicted of a felony;
10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;
11. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
12. Forging another's name to an application for insurance or to any document related to an insurance transaction;
13. Improperly using notes or any other reference material to complete an examination for an insurance license;
14. Knowingly accepting insurance business from an individual who is not licensed;
15. Failing to comply with an administrative or court order imposing a child support obligation; or
16. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

§ 38.2-1832. Refusal to issue and revocation of license; hearing; new application.

A. If the Commission believes that any applicant for a license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. Except as provided in § 38.2-1042, the Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten calendar days' notice in writing of the time and place of the hearing if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension, as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1826, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

B. The license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

Oversight of Agents by the Bureau of Insurance

- The Bureau maintains a database of all agents, their license(s), appointment(s) and continuing education statuses. Appropriate action is taken when statuses are not updated as required pursuant to law, (i.e. maintenance of continuing education). There is an agent licensing section within the Bureau currently staffed by eight individuals who are responsible for all functions associated with the licensing of all agents in Virginia, (all license types).
- There are 3 sections within the Bureau, currently staffed with 18 investigators and 2 clerical support people, responsible for the investigation of agents (all license types). Most investigations are triggered by consumer complaints.

How Does Agent Regulation Relate to Today's Discussion about Navigators?

In deciding exactly what the role of the Navigator should be, Virginia's policymakers and Exchange administrators may want to focus on some objectives similar to those that apply to agent oversight and activities. In doing so, they will want to take into account the different roles that navigators and agents will play.

First and foremost, the consumer must be protected...

The navigator must be well informed and competent to provide the consumer with the best information to make an educated and well informed choice and ensure that the consumer understands his options.